

A. JOHNSON & CO., INC.

IBLA 78-620

Decided December 6, 1978

Appeal from the decision of the Geological Survey rejecting appellant's application to purchase Government royalty oil. GS-107-O&G.

Affirmed.

1. Applications and Entries: Generally--Applications and Entries: Filing--Oil and Gas Leases: Contracts for Sale of Royalty Oil or Gas

Where consideration of an application to participate in the Government royalty oil sales program filed after the deadline could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the program, the application is properly rejected.

APPEARANCES: A. W. Hawk, President, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

A. Johnson & Co., Inc., filed an application at the Metairie, Louisiana, Office of the Geological Survey (Survey) on March 21, 1978, to purchase Government royalty oil. On April 11, 1978, the Oil and Gas Supervisor, Production Control, Gulf of Mexico area, rejected the application because it was not received by March 20, 1978, the due date specified in the February 21, 1978, Federal Register, announcement of the sale (43 FR 7271). On May 15, 1978, appellant appealed to the Acting Director, Survey, asserting that the 1-day delay "was completely beyond Johnson's control" and the fault of a courier, contracted by it to deliver the application, and that in view of appellant's previous communications with Survey, it would be inequitable to reject the application.

The Acting Director affirmed the Oil and Gas Supervisor's decision, holding that acceptance of applications received after the

filing date, "would unduly interfere with the orderly conduct of the royalty oil program."

In its statement of reasons for appeal, appellant asserts its eligibility for participation in the purchase of Government royalty oil and advances five reasons for reversing the decision of Survey. These reasons are as follows: (1) Rejection of the application has caused, and continues to cause, irreparable economic harm; (2) The statute authorizing royalty oil sales, 30 U.S.C. § 192 (1976), allows the Secretary of the Interior to prescribe rules to carry out the purposes of the act. Nothing prevents him from waiving the deadlines he sets when enforcement would cause irreparable harm and the delay results in no inconvenience to the Government; (3) Appellant did everything in its power to comply. It contracted with a courier for delivery of the application by the deadline, the delay was not appellant's fault, and was immaterial as the application was received at 10 a.m. the following morning; (4) The purpose of a closing date is to insure fair treatment to all applicants. Here, considering that Survey knew 3 days prior to March 20, 1978, that appellant was sending an application, acceptance of that application would not result in prejudice to any other applicant nor result in unfair surprise 1/ ; (5) Appellant was determined to be an "eligible refiner" under 30 CFR 225.2(a), and participated in the lottery on a conditional basis. 2/

Royalty oil sales are conducted pursuant to 30 CFR Part 225a. The program is currently organized around 3-year contracts, the present group being scheduled to terminate June 30, 1979. Due to the availability of additional oil for sale, "mini-sales" have been held in 1977 and 1978, with all contracts terminating June 30, 1979.

The sale involved in this appeal was advertised February 21, 1978. The notice provided that applications "will be accepted if received by March 20, 1978." 43 FR 7271. After the closing date, Survey examined the applications to determine the eligibility of the applicants 3/ and the amount of oil being requested, and determined the amount of oil available for each eligible refiner.

On May 23, 1978, a drawing was held to determine priorities for amount and gathering systems from which oil would be taken. Applications were drawn until the supply of available oil was exhausted. The

1/ Appellant states that on March 17, 1978, its officer spoke with the Survey office to inform Survey that it was sending an application.

2/ No formal determination of appellant's eligibility has been made.

3/ To be eligible to receive a contract, the refiner must qualify as a small business concern under the rules of the Small Business Administration and be unable to purchase an adequate supply of crude oil in the open market. 30 CFR 225a.2(a), 225a.3. See Thunderbird Resources, Inc., 20 IBLA 248 (1975).

remaining time before July 1, 1978, the scheduled effective date of the contracts, was allotted for obtaining bonding, negotiating exchange agreements and giving lessee-operators the required 30-day notice that the Government would be taking royalty in kind. 30 CFR 225a.9.

[1] A royalty oil application filed after the closing date set out in the notice of sale is properly rejected. Some deadline for receipt of applications is necessary. For this royalty oil sale, the deadline established pursuant to 30 CFR 225a.8 was March 20, 1978. While not directly applicable to Survey, the regulations at 43 CFR 1821.2-2 are helpful by analogy. Those regulations permit the authorized officer to consider a late-filed document except where "(1) The law does not permit * * * [it]. (2) The rights of a third party or parties have intervened. (3) The authorized officer determines that further consideration of the document * * * would unduly interfere with the orderly conduct of business." 43 CFR 1821.2-2(g). Where consideration of an application to participate in the Government royalty oil sales program filed after the deadline could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the sales program, the application is properly rejected. Cf. Robert B. Ferguson, 20 IBLA 299 (1975). See also, McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955).

Appellant has not advanced any arguments compelling acceptance of its late application. Factors such as economic difficulty, lack of personal fault of appellant, communication apprising Survey that an application was being submitted, and appellant's probable eligibility are not legal reasons for accepting appellant's late application. It does not follow that because the statute anticipates that the Secretary of the Interior will prescribe rules to carry out royalty oil sales, 30 U.S.C. § 192 (1976), that such rules may then be disregarded when one applicant is late in applying.

Appellant has not explained why the courier was delayed in delivering the application. Nor has it offered any reasons why it waited until March 17, 1978, the Friday before the Monday applications were due, to send its application. In any event, the courier was appellant's agent, and the consequences of its delay, as between Survey and appellant, are properly borne by appellant. See Mar-Win Development Co., 20 IBLA 383 (1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

